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TODD AND OTHERS V. McFALL AND OTHERS.—Decided at Richmond, March 9, 1899.—*Riely, J.*

1. LEGACIES—*What fund chargeable—Intention to charge real estate.* As a general rule, the personal estate is not only the primary, but the only, fund for the payment of legacies, and the real estate is not chargeable with their payment in case of deficiency of personal estate, unless made so by the testator. The intention to charge the real estate, however, must be either expressly declared, or clearly deducible from the language and dispositions of the will.

2. WILLS—*Partnership real estate—Devised as real estate—Legacies.* A testator owning an interest in partnership real and personal property has the right, as respects the objects of his bounty, to distinguish between the two classes of property, and treat the personal estate as personalty, and the real estate as realty, and declare out of which fund pecuniary legacies shall be paid.

3. WILLS—*Case in judgment—Out of what fund legacies payable—Subrogation.* A testator bequeaths his personal property "subject to certain legacies hereinafter mentioned" to his nephews, and devises his real estate to the same nephews for life, with remainder in fee to their heirs, and then gives certain pecuniary legacies "payable from my estate." The time of payment of the legacies, and the division of the real estate, was postponed for several years in order to provide, as stated in the will, for the payment of a farm recently purchased. The personal estate was not sufficient to pay debts and legacies.

Held: The personal estate alone is liable for the payment of the legacies, and the real estate is not bound to contribute to the legacies the amount diverted to pay debts of the testator.

4. WILLS—*Legacies—Intention to charge real estate.* An intention to charge the real estate with the payment of legacies is inferred where pecuniary legacies alone are first given and no part of the real estate is specially devised, followed by a residuary clause, devising and bequeating the residue of the real and personal estate; or where a testator devises his real estate, after a direction that debts and legacies be first paid; or devises the remainder of his estate, real and personal, after the payment of debts and legacies; or the devise is declared to be made after they are paid.

5. DEBTS OF DECEDENT—*Primary funds of payment—Liens on land.* In the absence of a testamentary provision for the payment of debts, the personal property of a decedent in the primary fund for their payment, even though the debts be secured by a lien given by the decedent in his lifetime on his real estate.

6. CHANCERY PRACTICE—*Rehearing—Acquiescence—Estoppel.* The mere lapse of ten years will not estop a party to a pending suit from filing a petition to rehear an interlocutory decree in the suit.

NEWPORT NEWS, HAMPTON AND OLD POINT DEVELOPMENT CO.

V. NEWPORT NEWS STREET RAILWAY CO.—Decided at Richmond, March 16, 1899.—*Harrison, J.* Absent, *Cardwell, J.*

1. STATUTE OF FRAUDS—*Written contracts—Resolutions of directors—Completed contract.* A resolution of the board of directors of a corporation duly signed by its president and secretary, which sufficiently sets forth the terms of the contract, is